



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

MICHAEL D. JUDY

Plaintiff,

v.

PREFERRED COMMUNICATION  
SYSTEMS, INC., a  
Delaware corporation,

Defendant.

C.A. No. \_\_\_\_\_

**VERIFIED COMPLAINT UNDER 8 DEL. C. § 220**

Plaintiff Michael D. Judy ("Plaintiff"), for his complaint against Defendant Preferred Communication Systems, Inc. ("Preferred" or the "Company"), alleges as follows:

**NATURE OF THE ACTION**

1. This action, brought pursuant to Section 220 of the General Corporation Law of the State of Delaware, seeks relief in the form of an order compelling the Company summarily to make available to Plaintiff for inspection and copying certain information and records of the Company as demanded by Plaintiff in a letter dated May 29, 2009.

**THE PARTIES**

2. Plaintiff is a record owner of at least 16,666 shares of Class A Common Stock, par value \$.001 per share, of the Company (the "Class A Common Stock").

3. The Company is a corporation organized under the laws of the State of Delaware. Through the ownership of telecommunications licenses, Preferred is in the early stages of development to become a full service wireless telecommunications provider in key market areas across the United States and Puerto Rico. The Company's goal is to be the leading

provider of wireless services in Puerto Rico and surrounding markets in the Caribbean and Latin America.

### **FACTUAL ALLEGATIONS**

4. In 1999, the Company and its wholly-owned subsidiary, Preferred Acquisitions, Incorporated, a company incorporated under the laws of the Commonwealth of Puerto Rico (“PAI”), acquired 86 site-based SMR licenses located in the U.S. Virgin Islands and Puerto Rico. Thereafter, in 2000, PAI filed an application to participate in an auction conducted by the Federal Communications Commission (the “FCC”), so-called Auction No. 34, during which PAI was the successful bidder of 38 SMR economic area (“EA”) licenses along the eastern seaboard, the western coast of California, as well as in Puerto and the U.S. Virgin Islands (together, the “FCC Licenses”). The FCC licenses are potentially extremely valuable.

5. In order to maintain its continued ownership of the FCC Licenses, the Company is required to file, in a timely manner, license renewal applications and related documents with the FCC related to the existing FCC Licenses. It has come to the attention of Plaintiff and other stockholders of the Company that the Company has failed to make certain of the license renewal filings with the FCC, thereby jeopardizing the Company’s continued interest in the FCC Licenses.

6. The current Chairman of the Board, President, and sole director of the Company is Charles M. Austin (“Austin”). Austin has been derelict in his duties as an officer and director of the Company for some time, but his recent failure to cause the Company to make the necessary filings with the FCC in order to maintain the Company’s interest in the FCC Licenses has caused irreparable injury and has threatened the viability of the Company.

7. The Company is also party to certain matters currently before the FCC Enforcement Bureau, styled *In the Matter of Pendleton C. Waugh, Charles M Austin, and Jay R.*

*Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc.*, E.B. Docket No. 07-147 (the “FCC Hearing”), involving, among other things, (i) whether the Company and PAI committed misrepresentations and/or lacked candor in its dealings with the FCC, (ii) alleged transfers of control of certain licenses held by the Company without FCC approval and (iii) the qualifications of the Company, PAI, and their principals, to be and remain FCC licensees. Among other things, the outcome of the FCC Hearing may affect the ownership rights of certain stockholders of the Company and may affect whether the Company and PAI may continue to hold such FCC Licenses. On March 11, 2009, the FCC Hearing was suspended while the parties seek to reach a negotiated settlement. Since commencement of the FCC Hearing in 2007, the Company has not responded to inquiries by its stockholders regarding any developments in the FCC Hearing.

8. Other than providing some basic information via the Company’s website, throughout his tenure, Austin has failed to regularly provide the Company’s stockholders with information, financial or otherwise, about the Company. Moreover, although the Company was incorporated in January 1998, Austin has failed to *ever* cause the holding of an annual meeting of stockholders, thereby denying the Company’s stockholders the opportunity to contest Austin’s management of the Company as its sole director and officer and preventing stockholders from obtaining information about the Company of the sort traditionally provided to stockholders in connection with annual meetings.

9. In addition to the failure to hold any annual meetings of stockholders, the Company (through Austin) has refused previous informal requests by certain stockholders for information regarding the performance of the Company and its business.

10. On or about March 27, 2007, Austin purported to reorganize the corporate structure of the Company by (i) implementing a forward split of the existing shares of common

stock of the Company, par value \$.001 per share (the “Common Stock”), on a two-for-one basis; (ii) reclassifying the existing shares of Common Stock into Class A Common Stock; and (iii) creating a new class of common stock designated as Class B Common Stock, par value \$.001 per share (the “Class B Common Stock”). In addition, through the plan of reorganization, the rights of the holders of the Company’s existing Series A Preferred Stock, par value \$.001 per share, were purportedly modified and a new series of preferred stock, Series B Preferred Stock, par value \$.001 per share, was created. The foregoing reorganization was purportedly accomplished through an agreement between the Company and its then current stockholders, which agreement Plaintiff approved by written consent. However, the Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on March 27, 2007, failed to incorporate any language regarding the forward split of the Common Stock or the reclassification of the Common Stock into Class A Common Stock. Thus, it remains unclear to Plaintiff whether the reorganization was effective under Delaware law. Moreover, Plaintiff never received a new stock certificate evidencing his ownership of Class A Common Stock after the reorganization, thus further calling into question whether the foregoing reorganization of the Company was properly approved, documented, and effective under Delaware law.

11. By letter dated May 29, 2009, Plaintiff made a written demand, under oath, pursuant to 8 *Del. C.* § 220 (the “Demand”), to inspect certain books and records of the Company and PAI. A copy of the Demand is attached hereto as Exhibit A.

12. As set forth in the Demand, Plaintiff seeks access to the following categories of Preferred’s books and records, dating from January 1, 2006, unless otherwise specified, and to make copies and extracts therefrom:

- a. The Company's stock ledger and a list of the Company's stockholders;
- b. The current Certificate of Incorporation and Bylaws of the Company and the Articles of Incorporation (or similar governing document) and Bylaws of PAI;
- c. All amendments to the Certificate of Incorporation or Bylaws of the Company and all amendments to the Articles of Incorporation (or similar governing document) or Bylaws of PAI;
- d. Any stockholder agreements, voting trusts, and/or similar agreements among stockholders and/or between the Company or PAI and any stockholders;
- e. All corporate minute books of each of the Company and PAI, including minute books relating to the boards of directors of the Company and PAI, or any committee thereof, as well as minute books relating to stockholder meetings of each of the Company and PAI;
- f. All contracts between each of the Company and PAI and their respective officers and directors, including, but not limited to, employment contracts and compensation agreements;
- g. All contracts or agreements between each of the Company and PAI and any and all consultants;
- h. All records reflecting any statement or submissions made by the Company or PAI to the FCC;
- i. Any agreement or other document that reflects, contains the terms of, or summarizes (a) compensation, benefits, or any other remuneration provided by each of the Company and PAI to any officer, director, agent, or consultant of the Company or PAI, (b) any loans made by the Company or PAI to any officer or director of the Company or PAI, and/or (c)

any investments by the Company or PAI in any outside business ventures in which any director or officer of the Company or PAI is engaged;

j. All quarterly, annual, and any other financial statements or reports of the Company and/or PAI, whether audited or not; and

k. All business plans and/or financial projections of the Company and/or PAI, including any amendments thereto.

13. The Demand stated two independent purposes for the requested inspection: (a) to assist Plaintiff in communicating with other stockholders of the Company on matters relating to their interests in the Company and (b) to assist Plaintiff in investigating possible mismanagement of the Company by the officers and directors of the Company, including, but not limited to, any mismanagement associated with a failure to protect or renew the Company's interest in the FCC Licenses.

14. Plaintiff's demand complies with the requirements of 8 *Del. C.* § 220 with respect to the form and manner of making demand for inspection of the books and records described in the Demand. Moreover, the inspection Plaintiff seeks is for proper purposes within the meaning of 8 *Del. C.* § 220, which purposes are reasonably related to Plaintiff's interests as a stockholder of Preferred. The books and records sought are narrowly tailored to serve these purposes.

15. On June 5, 2009, the Company, through Austin, responded to the Demand by letter, wherein the Company made a blanket rejection of all of Plaintiff's requests for inspection. The Company's refusal letter is attached hereto as Exhibit B. The Company's response purports to justify the rejection of the Demand on the following bases: (a) an alleged failure to comply with 8 *Del. C.* § 220 regarding the form and manner of making inspection of the requested documents; (b) the alleged overly broad and unreasonably burdensome nature of

the request; (c) Plaintiff's alleged failure to have a "proper purpose" pursuant to 8 *Del. C.* § 220; (d) the alleged fact that Plaintiff's request and purpose are adverse to the Company; (e) the alleged absence of credible basis to support the inference of wrongdoing or mismanagement; and (f) the Company's alleged beliefs that Plaintiff "is associated with another company (or companies) and other individuals (including a convicted felon or felons) who are involved in a venture that has a highly questionable business premise and that might include elements of fraud" and that Plaintiff "may be intending to exploit the shareholders of [the Company] and/or use other information obtained via his request in a manner that is detrimental to [the Company] and its shareholders."

16. The Company's refusal to provide the requested information to Plaintiff is unfounded. First, Plaintiff has fully complied in all respects with 8 *Del. C.* § 220 regarding the form and manner of making inspection of the requested documents. Second, Plaintiff has tailored his requests to serve his stated purposes for demanding inspection. Third, Plaintiff has stated a proper purpose pursuant to 8 *Del. C.* § 220. Delaware courts have long recognized that both (a) communication with other stockholders of the Company on matters relating to their interests in the Company and (b) the investigation of mismanagement constitute proper purposes for inspection of a corporation's books and records. Fourth, Plaintiff's requests and purposes are not adverse to that of the Company; Plaintiff makes his requests in his interest as a stockholder and to advance the future viability and success of the Company. Fifth, contrary to the Company's refusal letter, Plaintiff has strong evidence to support an inference of wrongdoing and mismanagement, including, but not limited to, Austin's failure to make the necessary filing with the FCC to protect the Company's interests in the FCC Licenses, the Company's failure to ever hold an annual meeting of stockholders, and the Company's numerous and repeated refusals

to provide stockholders the most basic information about the Company's performance and its business.

17. By reason of the foregoing, pursuant to 8 *Del. C.* § 220, Plaintiff is entitled to the inspection sought in the Demand and has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order as follows:

- (a) summarily requiring Preferred to permit Plaintiff and/or its agents to inspect and copy the materials requested in the Demand;
- (b) awarding Plaintiff its costs and expenses, including reasonable attorneys' fees, in connection with this action; and
- (c) granting such other relief as the Court shall deem appropriate.

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Dated: June 12, 2009

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